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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

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7 JANE WHIPPLE,

8 Plaintiff,

9 v.

10 BETSY LOU WHIPPLE, *et al.*,

11 Defendants.  
12

Case No. 2:24-cv-01079-RFB-DJA

**ORDER**

13 Before the Court is Defendant Private Client Services' motion to compel arbitration. ECF  
14 No. 8. Defendants Betsy Lou Whipple, Warner Whipple, Newbridge Securities Corp., M.S.  
15 Howells & Co., and MSH Capital Advisors LLC filed joinders to the motion to compel. ECF Nos.  
16 12, 13, 20, 27. For the following reasons, the Court grants Defendant Private Client Services'  
17 motion to compel. The Court further grants the joinders filed by Defendants Warner Whipple and  
18 Newbridge Securities Corp., but denies the joinders filed by M.S. Howells & Co. and MSH Capital  
19 Advisors LLC, as well as Betsy Lou Whipple.

20 **I. PROCEDURAL HISTORY**

21 Plaintiff Jane Whipple initiated this action by filing a Complaint against Defendants Betsy  
22 Lou Whipple, Warner Whipple, Newbridge Securities Corp. ("Newbridge"), M.S. Howells & Co.  
23 ("M.S. Howells"), MSH Capital Advisors LLC ("MSH"), Private Client Services LLC ("PCS"),  
24 and Greenleaf Financial Network LLC ("Greenleaf") in the Seventh Judicial District Court,  
25 Lincoln County, Nevada, on January 25, 2024. ECF No. 1. On June 10, 2024, Defendant Warner  
26 Whipple removed the action to this Court. Id.

27 On June 25, Defendants Newbridge, M.S. Howells, and MSH filed joinders to the removal.  
28 ECF No. 11. On June 26, Defendant Warner Whipple filed a supplement to the petition for

1 removal, attaching, *inter alia*, an Amended Complaint filed by Plaintiff in the Seventh Judicial  
2 District on June 6, 2024. ECF Nos. 16, 16-5. On the same day, Defendant PCS filed a joinder to  
3 the petition for removal. ECF No. 17. On August 6, Defendant Betsy Lou Whipple filed a joinder  
4 to the petition. ECF No. 26.

5 On June 17, 2024, Defendant PCS filed the instant motion to compel arbitration. ECF No.  
6 8. On June 25, Defendants Newbridge, M.S. Howells, and MSH filed joinders to the motion. ECF  
7 Nos. 12, 13. Defendant Warner Whipple joined the motion on June 27. ECF No. 20. Defendant  
8 Betsy Lou Whipple joined the motion on August 6. ECF No. 27. Plaintiff has not responded to the  
9 motion. The Court's Order follows.

## 10 **II. FACTUAL ALLEGATIONS**

11 This action arises from alleged privacy violations that Plaintiff Jane Whipple uncovered in  
12 the course of discovery in a separate action involving the Kent and Jane Whipple Trust, where  
13 Plaintiff and Defendant Warner Whipple are adverse parties.

14 Jane Whipple and Warner Whipple are co-Trustees to the Kent and Jane Whipple Trust.  
15 Betsy Lou Whipple is, and at all relevant times was, Plaintiff's financial planner through her  
16 business BL Whipple Wealth Management. Betsy was a broker and/or agent of Defendants  
17 Newbridge, M.S. Howells, MSH, PCS, and Greenleaf.

18 On or about January 26, 2022, Plaintiff became aware of at least two alleged privacy  
19 violations of state and federal law. One of these violations, according to Plaintiff, occurred on  
20 October 2, 2017, where Betsy emailed Defendant Warner, without authorization, a copy of a Wells  
21 Fargo investment account statement of which Plaintiff was an owner. Subsequently, on January  
22 23, 2018, Betsy emailed Defendant Warner, without authorization, a copy of Plaintiff's November  
23 2017 PCS investment account statement on which Betsy is identified as an account executive. In  
24 this communication, Betsy stated to Warner: "I wonder if the Attorney's could put a lein [sic] on  
25 it. The other account is her account I've had for years. I believe it is now at \$30,000." Plaintiff  
26 contends that the "other account" references the account from the October 2, 2017,  
27 communication.

## 28 **III. LEGAL STANDARD**

1 The Ninth Circuit has determined that “the federal law of arbitrability under the Federal  
 2 Arbitration Act (‘FAA’) governs the allocation of authority between courts and arbitrators.” Cox  
 3 v. Ocean View Hotel Corp., 533 F.3d 1114, 1119 (9th Cir. 2008). The FAA states that “[a] written  
 4 provision in any ... contract evidencing a transaction involving commerce to settle by arbitration a  
 5 controversy” arising out of the contract or transaction “shall be valid, irrevocable, and enforceable,  
 6 save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. §  
 7 2. The FAA “requires courts to rigorously enforce agreements to arbitrate,” but it “does not require  
 8 parties to arbitrate when they have not agreed to do so.” Johnson v. Walmart Inc., 57 F.4th 677,  
 9 681 (9th Cir. 2023) (cleaned up); see also Comedy Club, Inc. v. Improv W. Assocs., 553 F.3d  
 10 1277, 1284 (9th Cir. 2009) (finding that “where [a] contract contains an arbitration clause, there is  
 11 a presumption of arbitrability”).

12 Because the FAA mandates that “district courts shall direct the parties to proceed to  
 13 arbitration on issues as to which an arbitration agreement has been signed[,]” a court’s involvement  
 14 is “limited to determining (1) whether a valid agreement to arbitrate exists and, if it does, (2)  
 15 whether the agreement encompasses the dispute at issue.” Chiron Corp. v. Ortho Diagnostic Sys.,  
 16 Inc., 207 F.3d 1126, 1130 (9th Cir. 2000) (internal quotation marks omitted). The party seeking to  
 17 compel arbitration has the burden to show that both of these questions must be answered in the  
 18 affirmative. See Nguyen v. Barnes & Noble, Inc., 763 F.3d 1171, 1175 (9th Cir. 2014); Ashbey v.  
 19 Archstone Prop. Mgmt., Inc., 785 F.3d 1320, 1323 (9th Cir. 2015). “If the answer is yes to both  
 20 questions, the court must enforce the agreement.” Lifescan, Inc. v. Premier Diabetic Servs., Inc.,  
 21 363 F.3d 1010, 1012 (9th Cir. 2004).

22 Section 3 of the FAA provides for a stay of legal proceedings whenever the issues in a case  
 23 are within the reach of an arbitration agreement. 9 U.S.C. § 3. A request for a stay is not mandatory.  
 24 Martin Marietta Aluminum, Inc. v. Gen. Elec. Co., 586 F.2d 143, 147 (9th Cir. 1978).

#### 25 **IV. DISCUSSION**

26 The Court now turns to the merits of Defendant’s motion to compel arbitration and the  
 27 related joinders to the motion.

#### 28 **A. Private Client Services’ Motion to Compel Arbitration**

1 The threshold question on any motion to compel arbitration is whether the parties formed  
2 an agreement. Here, it is not disputed that Defendant Private Client Services, LLC and Plaintiff  
3 entered into an agreement and that it contains an arbitration clause. The Court finds nothing in the  
4 record supporting a finding that the agreement is invalid.

5 Therefore, the Court considers whether the arbitration clause encompasses Plaintiffs'  
6 claims against PCS by looking to the agreement provided by Defendant. See Manuwal v. BMW  
7 of N. Am., LLC, 484 F. Supp. 3d 862, 864 n.1 (C.D. Cal. 2020) ("The Court may examine evidence  
8 outside the pleadings on a motion to compel arbitration."). In the agreement, Plaintiff  
9 acknowledges that her PCS Account Agreement contains a pre-dispute arbitration clause. PCS's  
10 arbitration clause provides that "[a]ny controversy between you and us shall be submitted to  
11 arbitration before the financial industry regulatory authority."

12 Because the agreement at issue here broadly directs any controversy between Plaintiff and  
13 PCS to arbitration, the Court finds that Plaintiff's *respondeat superior* cause of action against  
14 Defendant falls within the terms of the agreement. Moreover, Plaintiff does not argue, and the  
15 Court has not found anything on the record that suggests that the dispute in this action would not  
16 be covered by this agreement to arbitrate. See Bosinger v. Phillips Plastics Corp., 57 F. Supp. 2d  
17 986, 990 (S.D. Cal. 1999) ("A court will not ordinarily except a controversy from coverage of a  
18 valid arbitration clause unless it may be said with positive assurance that the arbitration clause is  
19 not susceptible [to] an interpretation that covers the asserted dispute."). Accordingly, given that  
20 the FAA "leaves no place for the exercise of discretion by a district court[.]" Dean Witter  
21 Reynolds, Inc. v. Byrd, 470 U.S. 213, 218 (1985), the Court finds that the dispute between Plaintiff  
22 and Defendant Private Client Services is arbitrable.

### 23 **B. Newbridge Securities Corporation's Motion to Compel Arbitration**

24 Having found that the arbitration provision is enforceable by Defendant Private Client  
25 Service, the Court now turns to Defendant Newbridge Securities' joinder to the motion. Again,  
26 there is no dispute that Plaintiff and Defendant entered into an agreement that contains a valid and  
27 enforceable arbitration clause.

28 The Court thus turns to the question of whether the dispute here is encompassed by the

1 arbitration provision. In it, Plaintiff agreed that “[a]ny controversy or claim arising out of or  
 2 relating to this Agreement shall be settled by FINRA arbitration[.]” Arbitration clauses  
 3 encompassing disputes “arising out of or relating to” a contract are considered broad. See Prima  
 4 Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 406 (1967) (finding that a clause requiring  
 5 arbitration of “[a]ny controversy or claim arising out of or relating to [an] Agreement” was broad);  
 6 see also Chiron Corp., 207 F.3d at 1131 (same). The claim against Newbridge Securities concerns  
 7 their relationship to Betsy Whipple, who is alleged to have violated state and federal law in her  
 8 role as a financial planner. This claim arises out of or relates to Plaintiff’s agreement with  
 9 Newbridge Securities, in which she established a financial relationship with Newbridge Securities  
 10 and which Betsy Whipple also signed. Therefore, the Court finds that Plaintiff’s *respondeat*  
 11 *superior* cause of action against Newbridge Securities is covered by the agreement Plaintiff signed  
 12 in creating a financial account with Defendant.

13 Accordingly, Defendant Newbridge Securities Corporation’s unopposed joinder in  
 14 Defendant Private Client Service’s motion to compel arbitration is proper. The Court finds that  
 15 Plaintiff’s claims against Defendant Newbridge Securities Corporation are similarly arbitrable.

### 16 **C. Warner Whipple’s Motion to Compel Arbitration**

17 The Court turns to Defendant Warner Whipple’s joinder to the motion to compel  
 18 arbitration. As before, the parties do not dispute that a valid and enforceable arbitration agreement  
 19 exists.

20 Defendant argues that Plaintiff is subject to the provisions of a binding arbitration  
 21 agreement in the Kent and Jane Whipple Trust to which Plaintiff and Defendant Warner are co-  
 22 Trustees. The provision states, in relevant part, that “[i]n the event of a disagreement at any time  
 23 when there are only two (2) Co-Trustees, then the dispute shall be submitted to arbitration[.]”  
 24 Given (1) the wide scope of “disagreement” the arbitration provision encompasses, (2) that  
 25 Plaintiff’s Amended Complaint concedes that Plaintiff’s causes of action against Warner arise out  
 26 of his fiduciary duties as co-Trustee, and (3) that, as a matter of federal law, “any doubts  
 27 concerning the scope of arbitrable issues should be resolved in favor of arbitration[.]” Benson v.  
 28 Casa de Capri Enterprises, LLC, 980 F.3d 1328, 1330–31 (9th Cir. 2020), the Court finds that the

1 Trust's arbitration provision encompasses the dispute here between Plaintiff and Defendant  
 2 Warner. Accordingly, the Court finds that the claims against Warner Whipple are subject to  
 3 arbitration.

4 **D. M.S. Howells & Co. and MSH Capital Advisors' Motion to Compel Arbitration**

5 Defendants M.S. Howells & Co. and MSH Capital Advisors LLC were not a party to any  
 6 of the preceding agreements and they have failed to provide the Court with any agreement they  
 7 may have entered into with Plaintiff. They have also advanced no argument as to why they may  
 8 compel arbitration pursuant to the other Defendants' agreements with Plaintiff. Defendants  
 9 nonetheless file a motion to join Defendant Private Client Services' motion to compel arbitration.

10 "Generally, the contractual right to compel arbitration may not be invoked by one who is  
 11 not a party to the agreement and does not otherwise possess the right to compel arbitration."  
 12 Kramer v. Toyota Motor Corp., 705 F.3d 1122, 1126 (9th Cir.2013) (citation and internal quotation  
 13 marks omitted). Yet, "[t]he United States Supreme Court has held that a litigant who is not a party  
 14 to an arbitration agreement may invoke arbitration under the FAA if the relevant state contract law  
 15 allows the litigant to enforce the agreement." Id. at 1128 (citation omitted); see also Ngo v. BMW  
 16 of N. Am., LLC, 23 F.4th 942, 946 (9th Cir. 2022) ("State law determines whether a non-signatory  
 17 to an agreement containing an arbitration clause may compel arbitration."). The Nevada Supreme  
 18 Court has recognized five theories to determine whether a non-signatory has the right to enforce  
 19 an arbitration provision: "(1) incorporation by reference; (2) assumption; (3) agency; (4) veil-  
 20 piercing/alter ego; and (5) estoppel." Truck Ins. Exch. v. Palmer J. Swanson, Inc., 189 P.3d 656,  
 21 660 (Nev. 2008). Notably, "[t]he strong public policy in favor of arbitration does not extend to  
 22 those who are not parties to an arbitration agreement." Comedy Club, Inc., 553 F.3d at 1287  
 23 (internal citation omitted).

24 The Court finds that none of the exceptions apply here. The Amended Complaint alleges  
 25 that Defendant Betsy Whipple, who signed the other Defendants' agreements, was acting as a  
 26 broker/agent of Defendants Newbridge, M.S. Howells, MSH, Private Client Services, and  
 27 Greenleaf. However, Defendants M.S. Howells and MSH have not demonstrated that she was  
 28 acting as their agent at the time that she signed the contracts with Private Client Services or

1 Newbridge. Further, she was not identified as an agent for M.S. Howells and MSH in either of  
2 these agreements. Therefore, Defendants M.S. Howells and MSH have failed to establish that they  
3 can enforce the arbitration agreement between Plaintiff and the other Defendants. Accordingly,  
4 the Court denies their request to compel arbitration of the claims against them. Instead, Defendants  
5 M.S. Howells and MSH may file their own motion to compel arbitration.

6 **E. Betsy Lou Whipple's Motion to Compel Arbitration**

7 Finally, Defendant Betsy Lou Whipple filed a motion to join Defendant Private Client  
8 Services, LLC's motion to compel arbitration. However, the document is an exact copy of  
9 Defendants M.S. Howells & Co and MSH Capital Advisors LLC's joinder. The document contains  
10 the names, arguments, and signatures of Defendant M.S. Howells & Co and MSH Capital  
11 Advisors, LLC. Defendant Betsy has failed to sign the document as required by Rule 11(a) of the  
12 Federal Rules of Civil Procedure. The joinder must be stricken for this reason. See Fed. R. Civ. P.  
13 11(a) (requiring the court to "strike an unsigned paper unless the omission is promptly corrected").  
14 Defendant Betsy may file her own motion to compel arbitration.

15 **V. CONCLUSION**

16 For the foregoing reasons, **IT IS ORDERED** that Defendant Private Client Services'  
17 motion to compel arbitration, (ECF No. 8), is **GRANTED**.

18 **IT IS FURTHER ORDERED** that Defendant Newbridge Securities Corporation's  
19 joinder, (ECF No. 12), is **GRANTED**. The Court compels arbitration as to the claims against this  
20 Defendant.

21 **IT IS FURTHER ORDERED** that Defendant Warner Whipple's joinder, (ECF No. 20),  
22 is **GRANTED**. The Court compels arbitration as to the claims against this Defendant.

23 **IT IS FURTHER ORDERED** that Defendants M.S. Howells & Co. and MSH Capital  
24 Advisors LLC's joinder, (ECF No. 13), is **DENIED**.

25 **IT IS FURTHER ORDERED** that Defendant Betsy Lou Whipple's joinder, (ECF No.  
26 27), is **STRICKEN** from the record.

27 **IT IS FURTHER ORDERED** that litigation of the claims against Defendants Private  
28 Client Services, Newbridge Securities Corporation, and Warner Whipple are **STAYED** pending

1 the resolution of arbitration proceedings consistent with this Order.

2 **IT IS FURTHER ORDERED** that the parties subject to arbitration are instructed to  
3 submit a status report every ninety days after the commencement of arbitration until arbitration is  
4 concluded. Either party may move to lift the stay once arbitration has concluded.

5 **IT IS FURTHER ORDERED** that the Plaintiff and the Defendants not subject to  
6 arbitration shall submit a proposed scheduling order by **April 11, 2025.**

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9 **DATED:** March 29, 2025.

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12 **RICHARD F. BOULWARE, II**  
13 **UNITED STATES DISTRICT JUDGE**  
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